The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: General Electric Medical Systems

File: B-231342

Date: August 26, 1988

DIGEST

Agency did not act improperly in issuing a new solicitation to test the reasonableness of option prices where, due to the lapse of time since issuance of the original solicitation and the limited competition then obtained, it was reasonable to conclude that market conditions might have changed, and the complexity of the agency's requirement precluded use of an informal market survey.

DECISION

General Electric Medical Systems (GE) protests the issuance by the Defense Logistics Agency (DLA) of request for proposals (RFP) No. DLA120-88-R-0535, for x-ray systems. GE complains that DLA should not have issued a new solicitation to determine whether to exercise GE's option under an existing contract.

We deny the protest.

GE's contract, solicited in 1985, but not awarded until January 5, 1988, was for 84 units, with an option clause for 84 more units. Shortly after the award, on February 26, DLA issued the RFP in question for 60 x-ray systems, as amended. GE challenged issuance of the solicitation in an agency protest, and when that protest was denied, filed this protest with our Office.

GE argues that the Federal Acquisition Regulation (FAR) provides for use of a solicitation to test the market only when changes in the marketplace have occurred or a substantial period of time has elapsed since the first award. GE argues that neither factor was present here since only 42 days had elapsed between time of award and issuance of the new solicitation, and, based on prices GE states it has received under government contracts, market prices for x-ray systems have been stable for several years. GE claims,

therefore, that the agency acted improperly in issuing a new solicitation to test the reasonableness of GE's option prices.1/

Under Federal Acquisition Regulation (FAR) § 17.207, the applicable regulation, agencies are not required to exercise options under any circumstances. Rather, the regulation restricts the agency's discretion to exercise an option to where the agency considers the option the best means of satisfying its needs. The sole limitation on using a solicitation to test the market is that this approach should not be used "if it is anticipated that the best price available is the option price or that it is the more advantageous offer," FAR § 17.207(d); the regulation does not prohibit or discourage the use of a solicitation where the agency believes that the option may not reflect the most advantageous offer available in the marketplace.

DLA states that here, although the time from the award of GE's contract to issuance of the new solicitation was only 42 days, the time between the best and final closing date under the solicitation for GE's contract and the issuance of the new solicitation was actually more than 20 months, and DLA believed other firms had entered the government market during that time. This consideration was particularly important, according to the agency, because there was limited competition for the original procurement; the competitive range, in fact, consisted only of GE. The agency further explains that because the requirements for the x-ray systems were technically complex (requiring 240 pages of text in the solicitation), it was not feasible to test the market by conducting an informal market survey (an alternate method of testing the market under FAR § 17.207) of the 15 companies capable of competing. Given the wide discretion afforded the contracting agency in determining the reasonableness of exercising an option, Action Manufacturing Co., B-221607.3, May 15, 1987, 87-1 CPD ¶ 518, we find DLA's explanation reasonable and its use of a solicitation consistent with the regulations.

GE also argues that use of a solicitation was inconsistent with DLA's supplement to the FAR, which states that a new solicitation normally should not be used to determine the

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1/ We consider here only the propriety of the method DLA used to decide whether to exercise GE's option; the actual decision whether to exercise the option is a matter of contract administration, outside the scope of our bid protest function. Northeast Air Group, Inc., B-228210, Jan. 14, 1988, 88-1 CPD ¶ 33.

reasonableness of option prices, DLA Regulation (DLAR) § 17.207(d)(1), and requires the contracting officer to prepare a memorandum justifying use of a new solicitation to test option prices, something DLA did not do here. As with the FAR, however, the DLAR does not prohibit the use of a solicitation to test the reasonableness of an option price, but merely encourages the use of less formal methods where appropriate. As discussed above, we find DLA reasonably determined that no other methods were more appropriate here. Since the circumstances necessary to support a formal justification are present, furthermore, the lack of a contemporaneous written justification is not a sufficient basis for sustaining the protest. See Southwest Marine, Inc.--Reconsideration, B-219423.2, Nov. 25, 1985, 85-2 CPD ¶ 594.

Finally, GE asserts that prior to issuing the first RFP, DLA had a known, firm requirement for the base contract quantity plus the option quantity, and that it therefore should have included the option quantity in the base amount under GE's contract. GE maintains that by soliciting half of the required quantity as an option, the agency in effect induced GE to expose its best price, which then became the ceiling price for an auction under the new solicitation.

The record indicates that DLA did not have a known firm requirement for any units in addition to the base quantity of 84 x-ray systems at the time the RFP for GE's contract was issued. The first purchase request for additional systems (above the base quantity in the GE solicitation), was for 4 units and was received by the contracting officer on August 28, 1986, 10 months after the GE solicitation was issued; the last, for 28 units, was received on January 20, 1988, more than 2 years after the solicitation was issued. There certainly is no evidence that DLA split its requirement for the purpose of setting up GE's contract price as a target for offerors on the new solicitation.

As for GE's suggestion that the effect of issuing a new RFP that disclosed its option price was to create an auction, we note that once DLA properly decided to issue a new solicitation, it was proper to advise offerors that their offers would be compared to the option price, since that comparison

would be decisive in determining whether award would be made under the RFP. See Milwaukee Valve Co., Inc., B-206249, Feb. 16, 1982, 82-1 CPD ¶ 135; Aerojet TechSystems Co., 65 Comp. Gen. 831, 86-2 CPD ¶ 271.

The protest is denied.

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General Counsel